

Chapter 13A-33 – ADMINISTRATIVE AND NONADMINISTRATIVE CONDITIONAL USE PERMIT

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Chapter 13A-33 – ADMINISTRATIVE AND NONADMINISTRATIVE CONDITIONAL USE PERMIT

13A-33-01 Purpose

The purpose of conditional uses is to allow a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts or, if the detrimental impacts or effects cannot be mitigated or eliminated, to prohibit such use.

13A-33-02 Application and Review Process – Administrative Conditional Use

An Administrative Conditional Use Permit is required for all uses listed as administrative conditional uses in each zone district or elsewhere in the Development Code. No person or entity shall operate or conduct a use designated as an administrative conditional use within the applicable zone district without first obtaining an Administrative Conditional Use Permit. Applications for an Administrative Conditional Use Permit are required to comply with all requirements of this ordinance for review and approval, including the requirements for a building permit, site plan, or subdivision approval procedures and any other applicable requirements of this Code, including, but not limited to, guarantees.

- A. **Development Review.** To help expedite review of an administrative conditional use proposal, prior to submitting an application for an Administrative Conditional Use Permit, interested persons may meet informally with staff to become acquainted with the substantive and procedural requirements of this Code.

If requested by staff, persons proposing a development that requires an administrative conditional use shall attend a Development Review Meeting. At the meeting, the various departments will initially assess the development proposal and information submitted and make suggestions with respect to the proposal's compliance with the provisions of the appropriate regulations of this Code, applicable building codes, and any other applicable ordinances, codes, or standards of the City; suggest possible means of mitigating or eliminating any detrimental impacts or effects; and provide information concerning the City's review requirements and procedures.

Staff members may request that additional studies or information, such as geotechnical studies, traffic impact analyses, market feasibility analyses, or noise impact analyses be submitted, together with the application for administrative conditional use review.

- B. **Application.** The property owner or authorized agent thereof shall submit the following, as determined necessary by staff:
1. An application together with all required information for an Administrative Conditional Use Permit.
 2. An application together with all information required for site plan review (where site plan review is required); or subdivision review (where subdivision review is required).

3. Sufficient information to demonstrate that the general and specific requirements and standards of this Code will be met by the construction and operation of the proposed building, structure, or use.
 4. Plats, plans and/or drawings drawn to scale showing the location and dimensions of buildings, streets, and other improvements on or near the subject property that may be affected by the proposed use and showing the nature and extent of those effects.
 5. Fees according to the fee schedule as adopted by the City Council.
- C. **Preliminary Review.** Upon submittal of an administrative conditional use application and supporting information, it shall be reviewed by staff to determine if it is complete and complies with all requirements of this Code. If the proposed conditional use also requires site plan or subdivision review, it shall proceed through the preliminary review process as set forth for those applications.
- D. **Director Review.** The Director shall review the application(s) including all information to determine if the General Standards have been complied with, and/or all impacts and detrimental effects have been addressed and to receive public input, when required, concerning detrimental impacts or effects and their mitigation or elimination. Additional studies/analysis may be required to enable the Director to determine what detrimental impacts or effects need to be addressed, and the Director may establish additional conditions to address them.
- E. **Final Review.** If the Director establishes additional requirements and conditions, the applicant shall submit all necessary documents that comply with all the ordinances, requirements, corrections, additions, conditions, etc. to the Director. Final review and decision of approval shall be granted by the Director.

13A-33-03 Application and Review Process – Nonadministrative Conditional Use

A Nonadministrative Conditional Use Permit is required for all uses listed as nonadministrative conditional uses in each zone district or elsewhere in the Development Code. No person or entity shall operate or conduct a use designated as a nonadministrative conditional use within the applicable zone~~ing~~ district without first obtaining a Nonadministrative Conditional Use Permit. Applications for a Nonadministrative Conditional Use Permit are required to comply with all requirements of this ordinance for review and approval, including the requirements for a building permit, site plan, or subdivision approval procedures and any other applicable requirements of this Code, including, but not limited to, guarantees. The Director shall determine when an application is complete.

- A. **Development Review.** To help expedite review of a nonadministrative conditional use proposal, prior to submitting an application for a Nonadministrative Conditional Use Permit, interested persons may meet informally with staff to become acquainted with the substantive and procedural requirements of this Code.

If requested by staff, persons proposing a development that requires a nonadministrative conditional use shall attend a Development Review Meeting. At the meeting, the various departments will initially assess the development proposal and information submitted and make suggestions with respect to the proposal's compliance with the provisions of the appropriate regulations of this Code, applicable building codes, and any other applicable ordinances, codes,

or standards of the City; suggest possible means of mitigating or eliminating any detrimental impacts or effects; and provide information concerning the City's review requirements and procedures.

Staff members may request that additional studies or information, such as geotechnical studies, traffic impact analysis, market feasibility analysis, or noise impact analysis be submitted, together with the application for nonadministrative conditional use review.

B. **Application.** The property owner or authorized agent thereof shall submit the following, as determined necessary by staff:

1. An application together with all required information for a Nonadministrative Conditional Use Permit.
2. An application together with all information required for site plan review (where site plan review is required); or subdivision review (where subdivision review is required).
3. Sufficient information to demonstrate that the general and specific requirements and standards of this Code will be met by the construction and operation of the proposed building, structure, or use.
4. Plats, plans and/or drawings drawn to scale showing the location and dimensions of buildings, streets, and other improvements on or near the subject property that may be affected by the proposed use and showing the nature and extent of those effects.
5. Fees according to the fee schedule as adopted by the City Council.

C. **Initial Review.** Upon submittal of a nonadministrative conditional use application and supporting information, it shall be reviewed by staff to determine if it is complete and complies with all requirements of this Code. If the proposed conditional use also requires site plan or subdivision review, it shall proceed through the preliminary review process as set forth for those applications.

D. **Planning Commission Review.** When initial review of the nonadministrative conditional use and site plan or subdivision (if required) has been determined to be complete and in compliance with all requirements, the application(s) together with all supporting information, will be forwarded to the Planning Commission for preliminary review at a public hearing.

The Planning Commission shall review the application(s) including all information to determine if the General Standards have been complied with, and/or all impacts and detrimental effects have been addressed and to receive public input, when required, concerning detrimental impacts or effects and their mitigation or elimination. Additional studies/analyses may be required to enable the Planning Commission to determine what detrimental impacts or effects need to be addressed, and the Planning Commission may establish additional conditions to address them.

E. **Final Review.** If the Planning Commission grants preliminary nonadministrative conditional use approval and establishes additional requirements and conditions, the applicant shall submit all necessary documents that comply with all the ordinances, requirements, corrections, additions, conditions, etc. to the Community Development Department to determine compliance. Final review and decision of approval shall be granted by the Director unless otherwise directed by the Planning Commission.

13A-33-04 General Standards for All Conditional Uses

No conditional use may be approved unless the proposed use complies with the applicable provisions of this Code, State, and Federal law; and the following standards that apply to all conditional uses.

- A. **Equivalent to Permitted Use.** Any detrimental impacts or effects from the proposed use on any of the following shall not exceed those that could reasonably be expected to arise from a use that is permitted in the district:
1. The health, safety, and welfare of the City and its present and future inhabitants and businesses.
 2. The prosperity of the City and its present and future inhabitants and businesses.
 3. The morals, peace and good order, comfort, convenience, and aesthetics of the City and its present and future inhabitants and businesses.
 4. The tax base.
 5. Economy in governmental expenditures.
 6. The State's agricultural and other industries.
 7. The urban and nonurban development.
 8. Access to sunlight for solar energy devices.
 9. Property values.
- B. **Impact Burden.** Any cost of mitigating or eliminating detrimental impacts or effects in excess of those which could be reasonably expected to arise from a permitted use shall become a charge against the development so as not to constitute a burden on the municipality, surrounding neighbors, or adjacent land uses.
- C. **Conform to the Objectives of the General Plan.** The proposed conditional use shall promote and conform with the objectives of the General Plan and shall not limit the effectiveness of land use controls, promote blight, or injure property values.

13A-33-05 Conditions

In order to achieve compliance with the standards set forth herein, the City may impose conditions that address:

- A. Size, configuration, and location of the site and the proposed site plan layout.
- B. Proposed site ingress and egress to existing and proposed roads and streets.
- C. The adequacy, provision, relocation, or protection of public facilities and amenities, including roads and streets, culinary water, secondary water, sanitary sewer, storm drainage, public safety and fire protections, and other utilities.

- D. Design, location, and amount of off-street parking, loading areas and solid waste disposal, and refuse collection areas.
- E. Site circulation patterns for vehicular, pedestrian and other traffic.
- F. Massing, size, number, location, design, exterior features, materials, and colors of buildings, structures, and other facilities.
- G. The location and design of all site features, including proposed signage, lighting, and site furnishings.
- H. The provision of useable open space, public features, and recreational amenities.
- I. Fencing, screening and landscape treatments, and other features designed to increase the attractiveness and safety of the site and protect adjoining property owners from noise, visual, and other impacts.
- J. Measures directed at minimizing or eliminating possible nuisance factors including, but not limited to noise, vibrations, smoke, dust, dirt, debris, plant materials, odors, gases, noxious matter, heat, glare, electromagnetic disturbances, and radiation.
- K. Measures designed to protect the natural features of the site including wetlands and drainage ways, ground water protection, soils, wildlife, and plant life.
- L. The regulation of operating hours for activities affecting normal schedules and functions.
- M. Identifying a time for regular review and monitoring, as determined necessary, to ensure the use continues to operate in compliance with all conditions and requirements of approval.
- N. Measures to ensure compliance with all conditions and requirements of approval, including, but not limited to, bonds, letters of credit, improvement agreements, agreements to conditions, road maintenance funds, and restrictive covenants;
- O. Such other conditions determined reasonable and necessary by the City to allow the operation of the proposed conditional use, at the proposed location in compliance with the requirements of this Code.

13A-33-06 Determination

A Conditional Use Permit shall be approved if conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with the standards set forth herein. If the reasonably anticipated detrimental impacts or effects of the proposed conditional use cannot be substantially mitigated or eliminated by the proposal or the imposition of conditions to achieve compliance with the standards set forth herein, the Conditional Use Permit may be denied.

13A-33-07 Modification or Revocation

All approvals of Conditional Use Permits are conditional upon additional reviews, after the use has been established, to determine if the actual detrimental impacts and effects have been mitigated or eliminated

to meet the General Standards set forth herein and to evaluate whether they continue to be effective in doing so. If the use does not meet the General Standards, additional conditions may be imposed to achieve compliance. The Planning Commission, on its own motion or upon a staff recommendation or after receipt of an applicant's request, may hold a hearing upon the question of modification or revocation of a Conditional Use Permit granted under or pursuant to the provisions of this Section. The Planning Commission may modify the conditions under which the conditional use was granted or revoke the Conditional Use Permit if the Commission finds:

- A. The actual detrimental effects or impacts are greater than anticipated.
- B. The permit was obtained by misrepresentation or fraud.
- C. The use for which the permit was granted has now ceased for at least six consecutive calendar months.
- D. One or more of the conditions of the permit have not been met.
- E. The holder or user of the Conditional Use Permit has failed to comply with any City, State or Federal law governing the conduct of the use.
- F. The holder or user of the Conditional Use Permit has failed to construct or maintain the site as shown on the approved plan.
- G. One or more of the General Standards have not been met.

13A-33-08 Building Permit

After the Community Development Department determines that the documents, information, site plan (where required) or subdivision plat (where required) comply with all the requirements established by the departments, agencies, Planning Commission, and this Ordinance, the Director may approve an application for a building or other permit or business license for those uses that do not require construction.

13A-33-09 Expiration

A Conditional Use Permit shall expire and become null and void if the permit has not been implemented by the recipient within one year of the date of approval. The permit shall be considered implemented if the recipient either engages or participates in the conditional use or completes substantial construction on the project for which the permit was granted. The Community Development Department may grant a maximum of two extensions of up to six months each if it finds that the use, with the conditions previously imposed by the Planning Commission, will still be in compliance with the General Standards. If the Department finds that the use no longer complies with those standards, the recipient may request that the Planning Commission review the request for an extension. The Planning Commission may grant a maximum of two extensions of up to six months each if it finds that the use, with the conditions previously imposed, or with the imposition of additional conditions, will still be in compliance with the General Standards.

13A-33-10 Administrative Conditional Use Appeals

- A. All appeals from decisions of the Director regarding Administrative Conditional Use Permits shall be reviewed by an administrative law judge. The administrative law judge shall be appointed by the Mayor with the advice and consent of the City Council.
- B. An appeal shall be filed in writing with the City Recorder within 10 calendar days of the date that the Director issues his written decision.
- C. Except as provided in subsection (D), review of decisions of the Director shall be confined to the record developed by the Director.
- D. The administrative law judge may hold a public hearing or permit an evidentiary review outside the record to determine whether:
 - 1. An alleged procedural irregularity has occurred that does not appear in the record; or
 - 2. The proposed use would:
 - a. Influence patterns of growth adverse to the integrity of the General Plan as implemented by the zoning ordinance;
 - b. Have a long-term detrimental impact on City resources available for capital improvements or urban services; or
 - c. Undermine the health, safety, or welfare of the surrounding neighborhood or community.

If the Administrative law judge determines that the use does not comply with the General Standards or that the conditions proposed or imposed do not substantially mitigate or eliminate all anticipated detrimental impacts or effects, it shall then determine if there are additional or substitute conditions that may be proposed or imposed.

If the administrative law judge determines that the detrimental effects of the proposed conditional use cannot be substantially mitigated or eliminated by the proposed or imposed conditions in order to achieve compliance with the standards, it may deny the conditional use. The administrative law judge may also remand the appeal to the Director for further consideration. The administrative law judge shall be governed by the General Standards set forth herein in making its determination.

- E. Any decision by the administrative law judge, except a remand to the Director, shall be final and subject to the conditions imposed by the Director. The Development Code shall not be construed to vest a right to any conditional use except upon complete and continued compliance with the conditions finally approved.
- F. Exparte communication between the administrative law judge serving in an official capacity in a proceeding regarding an administrative conditional use appeal and any party to the appeal is prohibited.

13A-33-11 Nonadministrative Conditional Use Appeals

- A. All appeals from decisions of the Planning Commission regarding Nonadministrative Conditional Use Permits shall be reviewed by the City Council.
- B. An appeal shall be filed in writing with the City Recorder within 10 calendar days of the date of the Planning Commission decision at which the permit was approved.
- C. Except as provided in subsection (D), review of decisions of the Planning Commission shall be confined to the administrative record developed by the Commission.
- D. The City Council may hold a public hearing or permit an evidentiary review outside the Planning Commission record to determine whether:
 - 1. An alleged procedural irregularity has occurred that does not appear in the record; or
 - 2. The proposed use would:
 - a. Influence patterns of growth adverse to the integrity of the General Plan as implemented by the zoning ordinance;
 - b. Have a long-term detrimental impact on City resources available for capital improvements or urban services; or
 - c. Undermine the health, safety, or welfare of the surrounding neighborhood or community.
- E. Hearings may be held by the City Council itself or by any Council member, hearing examiner, or agent appointed by the Council.
- F. The City Council shall review the record of the Planning Commission, together with additional evidence when received, to determine if the decision was correct.

If the City Council determines that the use does not comply with the General Standards or that the conditions proposed or imposed do not substantially mitigate or eliminate all anticipated detrimental impacts or effects, it shall then determine if there are additional or substitute conditions that may be proposed or imposed.

If the City Council determines that the detrimental effects of the proposed conditional use cannot be substantially mitigated or eliminated by the proposed or imposed conditions in order to achieve compliance with the standards, it may deny the conditional use. The City Council may also remand the appeal to the Planning Commission for further consideration. The City Council shall be governed by the General Standards set forth herein in making its determination.

- G. Any decision by the City Council, except a remand to the Planning Commission, shall be final and subject to the conditions imposed by the Council. The Development Code shall not be construed to vest a right to any conditional use except upon complete and continued compliance with the conditions finally approved.

- H. Exparte communication between members of the City Council serving in an official capacity in a proceeding regarding an appeal of a nonadministrative conditional use appeal and any party to the appeal is prohibited.